IN THE

# Supreme Court of the United States

**OCTOBER TERM—1946**

**Nos. 1169, 1170.**

HUDSON McGUIRE, *et al.*, *Petitioners,*

*v.*

EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co. Inc."), Debtor, and CHARLES A. DANA, *et al.*, Committee of Common Stockholders of Debtor, *Respondents.*

**Nos. 1173, 1174.**

HARRY R. AMOTT, *et al.*, Debenture Holders' Protective Committee, and J. DONALD DUNCAN, Trustee, *Petitioners,*

*v.*

CHARLES A. DANA, *et al.*, Common Stockholders Committee, and EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co. Inc."), Debtor, *Respondents.*

## JOINT BRIEF OF DEBTOR AND COMMON STOCKHOLDERS COMMITTEE IN OPPOSITION TO PETITIONS FOR CERTIORARI

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# INDEX



## Table of Cases

---

STATUTES

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# Supreme Court of the United States,

**October Term 1946**

| | |
|---|---|
| HUDSON MCGUIRE, *et al.*, *Petitioners*, v. EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co. Inc."), Debtor, and CHARLES A. DANA, *et al.*, Committee of Common Stockholders of Debtor, *Respondents.* | Nos. 1169, 1170. |
| HARRY R. AMOTT, *et al.*, Debenture Holders' Protective Committee, and J. DONALD DUNCAN, Trustee, *Petitioners*, v. CHARLES A. DANA, *et al.*, Common Stockholders Committee, and EQUITABLE OFFICE BUILDING CORPORATION (name changed to "Equitable Office Building 1913 Co. Inc."), Debtor, *Respondents.* | Nos. 1173, 1174. |

## JOINT BRIEF OF DEBTOR AND COMMON STOCKHOLDERS COMMITTEE IN OPPOSITION TO PETITIONS FOR CERTIORARI

This brief is in opposition to the petitions for certiorari by Harry R. Amott, et al., constituting a committee of debenture holders and by J. Donald Duncan, Trustee of Debtor; and to the separate petition for certiorari of Hudson McGuire, et al.

## Opinions Below

The District Judge filed a memorandum opinion (R. 99) in denial of the petition of stockholders, Knight and Doyle. He denied the petitions of the Stockholders Committee and of the Debtor without opinion (R. 101, 142). Mr. Justice Reed filed an opinion in granting to the stockholders and the Debtor a stay (R. 362) and the Circuit Court of Appeals filed an opinion of reversal of the District Court on the appeal of Knight and Doyle (R. 427, 158 F. (2) 838), and a per curiam opinion on the appeals of the Debtor and the Stockholders Committee (R. 437, 158 F. (2) 982).

## Jurisdiction

The petitioners invoke jurisdiction under § 24(c) of the Bankruptcy Act (11 U. S. C. A. § 47(c)) and under § 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., § 347(a)).

## Statutes

Pertinent provisions of the statutes will be found in the Appendix.

## Facts

On April 10, 1941 the Debtor, owner and operator of Equitable Office Building at 120 Broadway, New York, being unable to pay its debts as they matured, although not insolvent, filed a voluntary petition for reorganization under Chapter X of the Bankruptcy Act, which was immediately approved (R. 1).

The Debtor's funded debt and capital stock at the close of its fiscal year, April 30, 1946, were as follows (R. 327, 328, 330):

| | | |
|---|---|---|
| First Mortgage | | $15,880,543.35 |
| Second Mortgage Bonds | $3,000.00 | |
| Accrued interest | 990.00 | 3,990.00 |
| 5% Debentures | 4,754,000.00 | |
| Accrued interest | 1,069,650.00 | 5,823,650.00 |
| | | $21,708,183.35* |
| Common Stock without par | | 862,098 shs. |

On December 4, 1945, a Plan of reorganization, submitted by the Trustee on May 11, 1945, was approved by the District Judge (R. 175) and on May 13, 1946, as amended, it was confirmed by him (R. 261). There was no appeal and on July 8, 1946 an order in aid of consummation followed, prescribing the details (R. 273), but the Plan has not been consummated by any transfer of assets or delivery of the required securities.

The Plan (R. 181) was predicated upon a finding by the District Judge that as at December 4, 1945 the land and building had a value of $21,375,000 and the Debtor's other assets a value of $1,205,761.17, making a total of $22,580,761.17 (R. 177, fol. 531).

The Plan provides that (R. 181): (1) the first mortgage be left undisturbed; (2) the second mortgage bonds be paid in cash without interest; (3) the holders of the $4,754,000 of Debentures receive: (a) $2,852,400 ($600 bond for each $1000 debenture) in new second mortgage 5% income bonds convertible within a period of two years into 456,384 shares of common stock or within three years thereafter into

* As of May 1, 1947 the First Mortgage will have been reduced to $15,583,865.06 while accrued interest on the Second Mortgage Bonds and Debentures will have increased to $1,170 and $1,307,350, respectively, so that the total debt will be $21,649,385.06.

285,240 shares (the conversion price amounting to about $6.25 per share for the first period and $10 for the later period); and (b) 475,400 shares of common stock, (100 shares for each $1000 debenture); and (4) the holders of common stock receive one share of new common for each ten shares of old, or a total of 86,210 shares.

It will be observed that the debenture holders by availing of their conversion rights within two years would receive 931,704 shares* out of the total of 1,017,994 shares, or 91.6% of the equity as compared with 8.4% which would be retained by the present stockholders.

The Plan offered little to the stockholders, as a result of which only a small percentage of them qualified for voting by filing proofs of claim (R. 239). Of the 862,098 outstanding shares 163,568 qualified and voted approval, 27,927 shares voting against it (R. 128, fol. 383; R. 246-47, fols. 738-39).

On July 11, 1946, stockholders Knight and Doyle presented their petition to the District Judge proposing a modification of the Plan based upon an underwriting offer hereinafter described (R. 4). This petition was amended on the same day so as to increase the underwriting offer from $4.50 per share to $5.50 per share (R. 38). On July 16, 1946, the Stockholders Committee presented their petition to the District Judge seeking dismissal of the proceeding upon full payment of the claims against the Debtor, this proposal being based upon a substantially identical underwriting offer which by then had been increased to $6 per share (R. 102). The same day the District Judge denied the Knight and Doyle amended petition with a short memorandum opinion (R. 99) and denied the petition of the Stockholders Committee without opinion (R. 101). On July 22, 1946, the Debtor filed its petition (R. 127) similar in form to the

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* Valuing the debentures at principal and accrued interest ($5,823,650) their exchange for 931,704 new shares immediately upon consummation of the plan would be at the rate of $6.26 per share.

petition of the Stockholders Committee and on the same day the stockholders Knight and Doyle filed an amended petition (R. 147) based upon the increase in the underwriting offer to $6 per share, both of which were denied by the District Judge on July 31, 1946 without opinion (R. 142, 146).

The theory of the petitions by the Stockholders Committee and by the Debtor differed from the petition of stockholders Knight and Doyle (which prayed for an amendment of the Trustee's Plan) in that they were based upon the equitable right of a debtor to pay its debts and redeem its equity at any time before transfer of its property, and they asked for a dismissal of the proceedings upon acceptance and performance of the underwriting offer.

Despite such differences, all of the petitions were similar in objective and were based upon underwriting offers by City Investing Company (an outstanding realty corporation whose ability to perform has not been questioned) which proposed a reduction of the present shares, one new for ten old (R. 134), as in the confirmed Plan, and the underwriting of an offer *pro rata* to the stockholders of 862,098 new shares at $6 per share, amounting to $5,172,588 which, with the addition of less than $1,000,000 from the funds held by the Trustee, would be sufficient to pay in full with interest the claims of the debenture holders and of the holders of the Second Mortgage Bonds.

To enable immediate payment of the debentures pending completion of the new stock issue, City Investing Company offered to purchase for cash $5,200,000 short term Trustee's certificates (R. 136). The underwriter asked 69,686 shares for its underwriting fee (R. 135) which would have resulted in a total issue of 1,017,794 shares as in the Trustee's Plan. The underwriting offer was accompanied by the certified check of City Investing Company for $517,258.80, or 10% of its proposed commitment (R. 137).

There was attached as an exhibit to Knight and Doyle's last petition an estimated projection by Glen W. Thomas, Comptroller of City Investing Company, of cash balances of the Debtor for the period July 1, 1946 to October 31, 1947,

if the underwriting offer be accepted. This shows that after paying the Debentures with interest in September, 194€ from the proceeds of the underwriting and cash on hand and giving effect to estimated monthly receipts of $315,000 and operating disbursements of $104,000 plus real estate taxes and interest and amortization on the First Mortgage, Debtor would have reduced the Mortgage by November 1, 1947 to $15,430,600 and have left a cash balance of $1,524,400 "more than enough funds with which to operate successfully" (R. 160-162).

Immediately upon denial by the District Judge of the relief requested each of the three petitioners filed notice of appeal to the Circuit Court of Appeals (R. 169-174) and applied to that Court for a stay, each application being denied without opinion (R. 382, 392, 393, 411, 423, 424).

Thereupon the three petitioners obtained a stay from Mr. Justice Reed under § 240(a) of the Judicial Code (R. 360, 361). The Debtor and the Stockholders Committee filed petitions to this Court for certiorari to review the action of the District Court and the denials of stay by the Circuit Court. Stockholders Knight and Doyle filed petitions for certiorari to review only the denial of stay by the Circuit Court. On November 25, 1946, this court entered an order (Nos. 609, 610, Oct. Term, 1946) as follows (67 S. Ct. 297):

> "So much of the respective petitions for certiorari in these cases as asks for a writ to review the order of the United States District Court for the Southern District of New York is denied."

The Circuit Court of Appeals then heard the appeals of Knight and Doyle, of the Stockholders Committee and of the Debtor, reversed the District Judge's orders (R. 427-439), and fixed the time within which a new underwriting offer might be submitted (R. 438).

The Circuit Court in its decision held: (1) although the underwriting offer of City Investing Company had expired in terms, the appeal had not become moot since a new offer might be made of enough cash to pay off the debentures;

(2) the District Judge had the power to submit the underwriting offer to the stockholders but, in the exercise of his discretion, had erred in refusing to do so, because (a) the rights of the debenture holders to the new securities provided for in the Plan had not vested; (b) although a long delay had occurred in arriving at a confirmed plan, such delay was not a good reason to deny the stockholders any reasonable chance to protect their own interests since the interests of the debenture holders are fully preserved; and (c) any doubts as to whether the new company would be too much stripped of liquid assets should properly be left to the stockholders for decision.

## Question Presented

In proceedings under Chapter X of the Bankruptcy Act may a debtor, after confirmation of a plan of reorganization, but before its consummation by transfers of property and delivery of the required securities, avail of an improved value of its equity to pay off its creditors, principal and interest, in cash, and resume control of its property?

## Summary

1. The Circuit Court was correct in holding that prior to consummation of a plan of reorganization the stockholders have the right to save their equity by paying off the debenture holders in full with interest in cash. The debenture holders resist payment because the value of the securities allotted to them under the Plan exceeds the amount of their claims. The right of redemption is an underlying equitable doctrine with which the purposes of Chapter X of the Bankruptcy Act are in harmony. The bankruptcy courts exercise all equitable powers not prohibited by the act.

2. The decision of the Circuit Court in this case is in accord with the decisions of this Court in analogous cases.

In view of the unique facts of the present case, namely, the proposal to pay in full the claims of the debenture holders, there is no conflict between this decision and decisions in other circuits.

3. § 222 permits, with approval of the Judge, alteration or modification of a confirmed plan though it materially and adversely affects the interests of creditors and stockholders. This proposal to pay creditors in full did not affect them adversely. The District Judge was not justified in withholding approval.

4. The question is not moot.

5. The decision of the Circuit Court does not deprive the District Judge of discretion in considering upon remand such new proposals as may be submitted by the Debtor and the stockholders, when the language of the decision is viewed in the light of all the facts of the case.

## I.

**A debtor in reorganization may, before a confirmed plan has been consummated by delivery of the required securities and transfers of property, pay off its creditors and resume control of its own property.**

### A. The Decision of The Circuit Court To This Effect Is In Accord With A Doctrine Long Recognized By This Court.

The right of a debtor to pay off its creditors and resume control of its property springs from an underlying equitable doctrine.

In *Railroad Company* v. *Soutter*, 69 U. S. 510 (1864), after the contested amount of the debt had been determined, the Railroad Company offered to pay in full on condition that a receiver be discharged. The court below rejected that proposal. This Court said (p. 522) that the right of the defendant to pay its indebtedness and to have a restoration

of its property by discharge of the receiver was clear and did not depend on this discretion of the Circuit Court.

> "* * * It is a right which the party can claim; and if he shows himself entitled to it on the facts in the record there is no discretion in the court to withhold it. But refusal is error—judicial error—which this court is bound to correct when the matter, as in this instance, is fairly before it. * * *"

Bankruptcy courts exercise all equitable powers not prohibited by the Act (*Young* v. *Higbee Co.*, 324 U. S. 204, 214 (1945); *Pfister* v. *Finance Corp.*, 317 U. S. 144, 152 (1942); *Securities Comm'n* v. *U. S. Realty Co.*, 310 U. S. 434, 455 (1940); *Wayne Gas Co.* v. *Owens Co.*, 300 U. S. 131, 136, 137 (1937)).

The remedial purposes of Chapter X should be observed. If a debtor, in the course of the proceeding, has become favored by economic changes which have improved its asset values, or their liquidity, enabling it to pay its matured debts, an offer to pay its debts in full should be entertained at any time before vesting of opposing rights.

The petitions of the Debtor and Stockholders Committee to the District Court and their subsequent petitions to this Court for writs of certiorari (Nos. 609, 610, October Term, 1946), based their contentions upon this equitable doctrine and asked for a dismissal of the proceeding upon an acceptance and performance of the offer of City Investing Company. The Circuit Court, in reversing the District Court, granted the relief prayed for by Debtor and the Stockholders Committee by way of amendment to the Trustee's Plan under § 222, as prayed for in the Knight-Doyle petition, instead of by dismissal of the proceeding. The result to the Debtor and the Stockholders Committee is the same.

There is no conflict between the decision of the Circuit Court and the recent decision of this Court in *Insurance Group Committee* v. *Denver & Rio Grande Western R. R. Co.*, No. 690—October Term 1946, 91 L. Ed. 436. This Court

held in that case that a reexamination of a plan for the reorganization of a railroad company could not be directed without a showing of unconsidered changes in economic circumstances or unless it could be reasonably contended that the senior creditors had received more in value than the face of their claims. In the instant case the change in circumstances reflected by the offer of new cash financing occurred after the hearings upon and the confirmation of the Plan (R. 127, 129).

The resistance of the debenture holders to payment of their full claims in cash instead of in the stock, and bonds convertible into stock, allowed them under the Plan sufficiently establishes the improved value of the property. It is commonly known that since the war there has been a general upsurge in the value of real estate.

The principal and interest of the debentures as at April 30, 1946 amounted to $1,225 per debenture, or as quotations are generally made in the market, $122.50 per $100 face amount of debenture. Petitioners, McGuire, *et al.*, paid in the market an average of $235 per $100 for each debenture (R. 76, fol. 226). Another debenture purchaser, Lesch, paid at the rate of $225 per $100 (R. 97, fol. 289). Those prices reflected the stock and conversion rights and the improved equity values.

Moreover, the fact that a company experienced in New York real estate as City Investing Company offered more than $5,000,000 in cash upon a stock underwriting not previously obtainable indicates an increase in equity value.

Furthermore, under the Plan, the debenture holders are allotted stock and conversion rights of a value greater than the face of their claims.

One month after the confirmation of the Plan, the selling price of a debenture had risen to $2,300 (R. 379) almost double the face of the claim represented thereby of $1,225 in principal and accrued interest. The holder of a debenture would, under the Plan, receive 100 shares of new common stock and a new $600 bond convertible at once into 96 shares of new stock, so that he could hold, if he wished, 196 shares

of stock. After confirmation the new stock sold for as much as $13 per share on a "when issued" basis (R. 55) so that the 196 shares of stock had an indicated market value of approximately $2,550, or more than double a debenture claim for $1,225.

There is a further and basic difference between the present case and the railroad reorganization cases. Here the stockholders proposal will pay off in full, with interest, in cash, all matured claims against the debtor. This factor was not present in the railroad reorganization cases. There the debtor or its stockholders merely sought to have the plan reexamined in order to see whether a new plan more favorable to them could not be devised.

**B. The decision of the Circuit Court is not in conflict with the decisions of any Circuit.**

In the petition and brief of the Stockholders Committee to this Court for certiorari in Case No. 609 October Term 1946, which petition was denied in part on November 25, 1946 (*Dana, et al.* v. *Duncan*, 67 S. Ct. 297), reference was made to the seemingly inconsistent decisions of the Circuit Court of Appeals for the Second Circuit in *Country Life Apartments* v. *Buckley*, 145 F. (2d) 935 (1944), and *In re 1934 Realty Corporation*, 150 F. (2d) 477 (1945), cert. den. 326 U. S. 734 (1945). The decision of the Circuit Court in this case is in accord with its decision in the *1934 Realty Corporation* case and properly distinguished the *Country Life Apartments* case on its facts (R. 431, 432).

The petitioners have cited cases decided by other Circuit Courts which are claimed to be in conflict with the decision of the Circuit Court in this case. An examination of the facts of those cases show radical differences between them and the present case. The petitioners rely most strongly on *Diversey Building Corp.* v. *Metropolitan Trust Co.*, 141 F. (2d) 65 (C. C. A. 7, 1944). There the two most important factors were that (1) the amendments were proposed some eight years after the plan of reorganization had been consummated and new securities issued; and (2) the proposals

provided for payment of claims of creditors partly in cash and partly in stock, thereby radically changing the plan of reorganization. The Circuit Court in this case properly distinguished the *Diversey Building Corp.* case (R. 432). The other cases cited by the petitioners differ so greatly in their facts from the present case that there is no need to discuss them here.

## II.

### The Circuit Court correctly held that confirmation of the Plan did not vest rights in creditors.

Since § 222 of the Bankruptcy Act expressly permits modifications of a plan after confirmation, even if "they materially and adversely affect the interests of creditors", it cannot be said that confirmation finally vests interests in creditors. § 226, which provides that upon *consummation* the property shall be "free and clear of all claims and interests of the Debtor, creditors, and stockholders", as well as § 236, which expressly authorizes dismissal of proceedings *after confirmation,* further emphasizes that confirmation does not vest rights.

"Confirmation of a plan of reorganization is but a step in the administration of the debtor's estate * * *" and an order of confirmation is not the equivalent of a final discharge *Meyer* v. *Kenmore Hotel Co.,* 297 U. S. 160 (1936).

As this Court said in *Pfister* v. *Finance Corp.,* 317 U. S. 144, 152 (1942):

> "The entire process of rehabilitation, reorganization or liquidation is open to re-examination out of time by the District Court, in its discretion and subject to intervening rights."

Petitioners, McGuire, et al., claim that the confirmation of the Plan entitled them to trade in the market upon the anticipated security values in reliance upon an allegedly vested right to receive securities allocated to debenture holders under the Plan (McGuire brief, pages 8 and 9).

But they are assumed to have known that an order confirming the Plan was subject to the express qualifications and possibilities of modification under § 222. Quite obviously the District Judge may not permit daily market speculation to control his approval or disapproval of a proposed modification of a plan.

## III.

### The question is not moot.

The offer of City Investing Company to Knight and Doyle dated July 19, 1946 ran to October 15, 1946 "or such later date as the undersigned may agree to" (R. 156, fol. 468). The similar offer to the Common Stockholders Committee dated July 16, 1946 ran for 90 days (R. 107, fol. 321). The offer to the Debtor ran until October 15, 1946 "unless sooner rejected by you or extended by us" (R. 134, fol. 402).

The City Investing Company could not reasonably have been expected to stand still upon a commitment of $5,172,588 to await the end of litigation of the question whether its offer could be considered. The deposit of a check for $517,258 (R. 137) showed good faith. The offer to purchase at par up to $5,200,000 of Trustee's certificates to provide immediate funds (R. 136, fol. 408) was equivalent to an offer to lay the money on the table. Except for the opposition of debenture holders they would have been paid in full and the Debtor would now be upon its way.

Since there is nothing in the record to show that the value of the Debtor's property has declined since the making of the underwriting offer, the Circuit Court properly directed that the door be kept open a reasonable time within which the Debtor or the stockholders might produce the same or an equally responsible underwriting sufficient to pay off the debentures, principal and interest.

## IV.

**The decision of the Circuit Court does not deprive the District Court of discretion in considering, upon remand, the same or similar proposals by respondents.**

The petitioners contend that the Circuit Court, in directing the District Court to approve a new proposal, thereby deprived the District Court of jurisdiction to determine the questions of fairness, equitableness and feasibility of the proposals in alleged violation of § 221 of the Bankruptcy Act. In so contending they have failed to read this portion of the Circuit Court's decision in the light of the entire posture of the case. The District Court had approved a plan as fair, equitable and feasible. Since the proposals of the respondents afforded all stockholders of the Debtor an equal opportunity to retain their proportionate share of the equity in the Debtor's assets, except as to the stock to be awarded as an underwriting commission, there could be no question but that the proposals were fair and equitable to those affected thereby—namely, the stockholders. The Debenture holders would not be affected since they would be paid off in cash.

Furthermore, the Circuit Court directed that the new underwriting offer must be "reliable and practical", thus disposing of all arguments with respect to "feasibility".

The petitioners in Nos. 1172, 1173 and 1174 express anxiety over the possibility of foreclosure of the First Mortgage as a result of the absence of a Reserve Fund therefor and of a lack of adequate working capital. It is a sufficient answer to this that a company of the experience of City Investing Company had no fear of foreclosure and was willing to back its judgment with an underwriting offer of over $5,000,000 in cash. In addition it is pertinent to recall that the Circuit Court was considering a modification of a Plan which would permit the stockholders to retain their equity in the Debtor's assets and to pay off the debenture holders in cash, rather than turn over 91% of

such equity to the debenture holders. Therefore, any questions as to the feasibility of the modification, or as to its fairness as among the stockholders, is no concern of the debenture holders.

## Conclusion

It is respectfully submitted that the applications for writs of certiorari should be denied.

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April 18, 1947.

# APPENDIX

SECTIONS OF THE BANKRUPTCY ACT

Section 24c (11 U. S. C., § 47c) The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Court of Appeals of the United States and the United States Circuit Court of Appeals of the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

Section 121 (11 U. S. C., § 521) Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

Section 130(1) (11 U. S. C., § 530) Contents—Every petition shall state—

(1) that the corporation is insolvent or unable to pay its debts as they mature;

* * * * * *

Section 216(1) (11 U. S. C., § 616) Provisions of plan—A plan of reorganization under this chapter—

(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

* * * * * *

Section 221(1)(2) (11 U. S. C., § 621) Confirmation by court—The judge shall confirm a plan if satisfied that—

(1) the provisions of Article VII, section 199, and Article X of this chapter have been complied with;

(2) the plan is fair and equitable, and feasible;

* * * * * *

Section 222 (11 U. S. C., § 622) Alteration or modification of plan—A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed alteration or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in Article VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with.

Section 224 (11 U. S. C., § 624) Effect of confirmation—Upon confirmation of a plan—

(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commisison having regulatory jurisdiction over the debtor or such other corporation;

(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the

moneys for all payments which by the provisions of the plan or under this chapter are required to be made in cash; and

(4) distribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession as fixed claims or stock, liquidated in amount and not disputed.

Section 226 (11 U. S. C., § 626) The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property.

Section 228 (11 U. S. C., § 628) Final decree on consummation of plan—Upon the consummation of the plan, the judge shall enter a final decree—

(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

(2) discharging the trustee, if any;

(3) making such provisions by way of injunction or otherwise as may be equitable; and

(4) closing the estate.

Section 236 (11 U. S. C., § 636) If no plan is proposed within the time fixed or extended by the judge, or if no plan

proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

* * * * * *

(2) where the petition was filed under section 128 of this Act, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this Act, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders.

### Section 240a of the Judicial Code

Sec. 240a of the Judicial Code: (28 U. S. C. A., § 347a) *Certiorari to circuit courts of appeals and Court of Appeals of District of Columbia; appeal or writ of error to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed.* (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.